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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY ARNOLD,	)	No. C 08-1889 CW (PR)
	)	
Plaintiff,	)	ORDER OF SERVICE
	)	
v.	)	
	)	
M. S. EVANS, et al.,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION

Plaintiff Anthony Arnold, a state prisoner currently incarcerated at Salinas Valley State Prison (SVSP), filed a pro se prisoner complaint under 42 U.S.C. § 1983.

The Court reviewed the complaint pursuant to 28 U.S.C. § 1915A and dismissed it, finding that Plaintiff's allegations did not support a due process claim against Defendants. The Court allowed Plaintiff to file an amended complaint to cure the pleading deficiency. Plaintiff then filed his amended complaint on December 17, 2008.

BACKGROUND

According to the allegations in the amended complaint, Plaintiff was placed in administrative segregation on March 16, 2006 "pending the completion of an investigation into alleged involvement in promoting/participation in gang/disruptive group activity on a sensitive needs yard at Salinas Valley State Prison." (Am. Compl. at 3.) Thereafter, Plaintiff was found guilty "solely on (1030's) confidential [information] disclosure forms which were false, unreliable, and insufficient for the following reasons:

1 (Exhibit #7) confidential disclosure form states that Plaintiff has  
2 a pair of lips tatoo[ed] on his body which has proven to be an  
3 identifier of those belonging to the 2-5 gang." (Id.) Plaintiff  
4 claims that he does not have a "lips tatoo" on his body. (Id.) He  
5 claims other due process violations occurred during the hearing,  
6 specifically that the hearing officers did not disclose all the  
7 evidence they relied upon and that they denied him the opportunity  
8 to call witnesses.

9 On April 4, 2006, prison officials reviewed Plaintiff's  
10 records in light of his 602 inmate appeal relating to his due  
11 process claim.

12 On October 4, 2006, his 602 appeal was reviewed at the second  
13 level of review. Defendant A. Hedgpeth partially granted his  
14 appeal. He stated that a new Rules Violation Report would be  
15 issued and another hearing would take place. According to his  
16 Second Level Appeal Response, the Chief Disciplinary Officer was  
17 "ordered to assign a new Senior Hearing officer to this matter and  
18 ensure that all procedural due process rights are afforded the  
19 inmate as provided in Title 15, Division 3." (Pl.'s Ex. 3, Oct. 4,  
20 2006 Second Level Appeal Response at 2.)

21 Another hearing was conducted on March 28, 2007, and Plaintiff  
22 states he was found guilty and placed in long-term administrative  
23 segregation without a fair hearing and on the basis of evidence  
24 that is unreliable and insufficient under the terms of the  
25 settlement agreement in Castillo v. Alameida, No. 94-2847 MJJ (PR)  
26 (N.D. Cal.). Plaintiff seeks monetary damages and injunctive  
27 relief.  
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1 STANDARD OF REVIEW

2 A federal court must conduct a preliminary screening in any  
3 case in which a prisoner seeks redress from a governmental entity  
4 or officer or employee of a governmental entity. See 28 U.S.C.  
5 § 1915A(a). In its review, the court must identify cognizable  
6 claims and dismiss any claims that are frivolous, malicious, fail  
7 to state a claim upon which relief may be granted or seek monetary  
8 relief from a defendant who is immune from such relief. See id.  
9 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
10 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
11 699 (9th Cir. 1988).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
13 allege two essential elements: (1) that a right secured by the  
14 Constitution or laws of the United States was violated, and  
15 (2) that the alleged violation was committed by a person acting  
16 under the color of state law. See West v. Atkins, 487 U.S. 42, 48  
17 (1988).

18 DISCUSSION

19 The decision to place and retain a prisoner in administrative  
20 segregation must comport with procedural due process only if the  
21 specific deprivation at play constitutes "atypical and significant  
22 hardship on the inmate in relation to the ordinary incidents of  
23 prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995).  
24 Plaintiff's deprivation here -- a prolonged term of administrative  
25 segregation -- suggests sufficient severity to implicate procedural  
26 due process protection. The Ninth Circuit has held that a prisoner  
27 was entitled to the following procedures before placement in  
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1 administrative segregation: (1) an informal nonadversary hearing  
2 within a reasonable time after being segregated, (2) notice of the  
3 charges or the reasons segregation is being considered, and (3) an  
4 opportunity to present his views. See Toussaint v. McCarthy, 801  
5 F.2d 1080, 1100 (9th Cir 1986). There also must be "some evidence"  
6 to support the decision to segregate the prisoner for  
7 administrative reasons, id. at 1104-04 (citing Superintendent v.  
8 Hill, 472 U.S. 445, 455 (1985)), and the evidence relied upon must  
9 have "some indicia of reliability," Madrid v. Gomez, 889 F. Supp.  
10 1146, 1273-74 (N.D. Cal. 1995). In view of the following,  
11 Plaintiff's allegations regarding placement and retention in  
12 administrative segregation, when liberally construed, state  
13 cognizable claims under § 1983 for denial of due process against  
14 the following Defendants at SVSP: Warden M. S. Evans; Associate  
15 Warden G. Neotti, Chief Deputy Warden A. Hedgpeth; and Captain D.  
16 M. Mantel.

#### 17 CONCLUSION

18 For the foregoing reasons, the Court orders as follows:

19 1. The Clerk of the Court shall mail to SVSP Warden M. S.  
20 Evans; Associate Warden G. Neotti, Chief Deputy Warden A. Hedgpeth;  
21 and Captain D. M. Mantel: a Notice of Lawsuit and Request for  
22 Waiver of Service of Summons, two copies of the Waiver of Service  
23 of Summons, a copy of the amended complaint and all attachments  
24 thereto (docket no. 7), and a copy of this Order. The Clerk of the  
25 Court shall also mail a copy of the amended complaint and a copy of  
26 this Order to the State Attorney General's Office in San Francisco.  
27 Additionally, the Clerk shall mail a copy of this Order to  
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1 Plaintiff.

2       2. Defendants are cautioned that Rule 4 of the Federal Rules  
3 of Civil Procedure requires them to cooperate in saving unnecessary  
4 costs of service of the summons and complaint. Pursuant to Rule 4,  
5 if Defendants, after being notified of this action and asked by the  
6 Court, on behalf of Plaintiff, to waive service of the summons,  
7 fail to do so, they will be required to bear the cost of such  
8 service unless good cause be shown for their failure to sign and  
9 return the waiver form. If service is waived, this action will  
10 proceed as if Defendants had been served on the date that the  
11 waiver is filed, except that pursuant to Rule 12(a)(1)(B),  
12 Defendants will not be required to serve and file an answer before  
13 sixty (60) days from the date on which the request for waiver was  
14 sent. (This allows a longer time to respond than would be required  
15 if formal service of summons is necessary.) Defendants are asked  
16 to read the statement set forth at the foot of the waiver form that  
17 more completely describes the duties of the parties with regard to  
18 waiver of service of the summons. If service is waived after the  
19 date provided in the Notice but before Defendants have been  
20 personally served, the Answer shall be due sixty (60) days from the  
21 date on which the request for waiver was sent or twenty (20) days  
22 from the date the waiver form is filed, whichever is later.

23       3. Defendants shall answer the complaint in accordance with  
24 the Federal Rules of Civil Procedure. The following briefing  
25 schedule shall govern dispositive motions in this action:

26           a. No later than ninety (90) days from the date their  
27 answer is due, Defendants shall file a motion for summary judgment  
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1 or other dispositive motion. The motion shall be supported by  
2 adequate factual documentation and shall conform in all respects to  
3 Federal Rule of Civil Procedure 56. If Defendants are of the  
4 opinion that this case cannot be resolved by summary judgment, they  
5 shall so inform the Court prior to the date the summary judgment  
6 motion is due. All papers filed with the Court shall be promptly  
7 served on Plaintiff.

8           b. Plaintiff's opposition to the dispositive motion  
9 shall be filed with the Court and served on Defendants no later  
10 than sixty (60) days after the date on which Defendants' motion is  
11 filed. The Ninth Circuit has held that the following notice should  
12 be given to pro se plaintiffs facing a summary judgment motion:

13           The defendants have made a motion for summary  
14 judgment by which they seek to have your case dismissed.  
15 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end  
your case.

16           Rule 56 tells you what you must do in order to  
17 oppose a motion for summary judgment. Generally, summary  
18 judgment must be granted when there is no genuine issue  
19 of material fact -- that is, if there is no real dispute  
20 about any fact that would affect the result of your case,  
21 the party who asked for summary judgment is entitled to  
22 judgment as a matter of law, which will end your case.  
23 When a party you are suing makes a motion for summary  
24 judgment that is properly supported by declarations (or  
25 other sworn testimony), you cannot simply rely on what  
26 your complaint says. Instead, you must set out specific  
facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided  
in Rule 56(e), that contradict the facts shown in the  
defendant's declarations and documents and show that  
there is a genuine issue of material fact for trial. If  
you do not submit your own evidence in opposition,  
summary judgment, if appropriate, may be entered against  
you. If summary judgment is granted [in favor of the  
defendants], your case will be dismissed and there will  
be no trial.

27 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
28 banc).

1 Plaintiff is advised to read Rule 56 of the Federal Rules of  
2 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)  
3 (party opposing summary judgment must come forward with evidence  
4 showing triable issues of material fact on every essential element  
5 of his claim). Plaintiff is cautioned that because he bears the  
6 burden of proving his allegations in this case, he must be prepared  
7 to produce evidence in support of those allegations when he files  
8 his opposition to Defendants' dispositive motion. Such evidence  
9 may include sworn declarations from himself and other witnesses to  
10 the incident, and copies of documents authenticated by sworn  
11 declaration. Plaintiff will not be able to avoid summary judgment  
12 simply by repeating the allegations of his complaint.

13 c. If Defendants wish to file a reply brief, they shall  
14 do so no later than thirty (30) days after the date Plaintiff's  
15 opposition is filed.

16 d. The motion shall be deemed submitted as of the date  
17 the reply brief is due. No hearing will be held on the motion  
18 unless the Court so orders at a later date.

19 4. Discovery may be taken in this action in accordance with  
20 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
21 to Rule 30(a)(2) is hereby granted to Defendants to depose  
22 Plaintiff and any other necessary witnesses confined in prison.

23 5. All communications by Plaintiff with the Court must be  
24 served on Defendants, or Defendants' counsel once counsel has been  
25 designated, by mailing a true copy of the document to Defendants or  
26 Defendants' counsel.

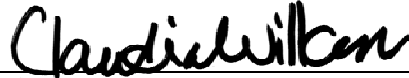
27 6. It is Plaintiff's responsibility to prosecute this case.  
28 Plaintiff must keep the Court informed of any change of address and

1 must comply with the Court's orders in a timely fashion

2 7. Extensions of time are not favored, though reasonable  
3 extensions will be granted. Any motion for an extension of time  
4 must be filed no later than fifteen (15) days prior to the deadline  
5 sought to be extended.

6 IT IS SO ORDERED.

7 DATED: 1/25/10



8 CLAUDIA WILKEN  
9 United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 ANTHONY ARNOLD,

5 Plaintiff,

6 v.

7 M.S. EVANS, WARDEN, ET AL. et al,

8 Defendant.  
\_\_\_\_\_ /

Case Number: CV08-01889 CW

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on January 25, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Anthony Arnold H-22763  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960

19 Dated: January 25, 2010

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk